

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: September 21, 22, 2005

Division: Public Works

Bulk Item: Yes X No     

Department: Facilities Maintenance 

Staff Contact Person: Ann Riger

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**AGENDA ITEM WORDING:** Approval to officially terminate the contract with Robbies Safe Harbor Marine Enterprises, Inc., for the beach cleaning, maintenance, & beautification services at Higgs Beach, Veterans Park, and Harry Harris Park, and approval to award bid and enter into a contract with Evans Environmental & Geological Science & Management, LLC, (EE&G) for the beach cleaning, maintenance, & beautification of Higgs Beach, pending contractors approval.

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**ITEM BACKGROUND:** On September 15, 2004, the BOCC approved to renew the contract for beach cleaning services with Robbies Safe Harbor Marine on a month to month basis. On June 30, 2005 they were suspended from their services for failure to maintain the required insurance. On June 28, 2005 a bid opening was held with EE&G submitting the only bid. The Tourist Development Council approved funding for EE&G at their August 31, 2005 meeting in Key Largo.

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**PREVIOUS RELEVANT BOCC ACTION:** N/A

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**CONTRACT/AGREEMENT CHANGES:** N/A

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**STAFF RECOMMENDATIONS:** Approval as stated above.

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**TOTAL COST:** \$87,750 per year

**BUDGETED:** Yes X No     

**COST TO COUNTY:** \$87,750.00

**SOURCE OF FUNDS:** T.D.C.

**REVENUE PRODUCING:** Yes      No X **AMOUNT PER MONTH**      **Year**     

**APPROVED BY:** County Atty X OMB/Purchasing X Risk Management X

**DIVISION DIRECTOR APPROVAL:**

  
Dent Pierce 

**DOCUMENTATION:** Included X Not Required     

**DISPOSITION:**     

**AGENDA ITEM #**

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

## CONTRACT SUMMARY

Contract with: E E & G

Contract #

Effective Date: 10/01/05

Expiration Date: 09/30/05

**Contract Purpose/Description:**

Contract Manager: Ann Riger  
(Name)

4549

(Ext.)

### Facilities Maint/Stop #4

(Department/Stop #)

for BOCC meeting on 09/21/05

Agenda Deadline: 09/06/05

## CONTRACT COSTS

Total Dollar Value of Contract: \$ \$87,750.00 Current Year Portion: \$ 0.00

Budgeted? Yes ☒ No ☐

Account Codes: 77040-530460-T58M102X- -

Grant: \$ N/A

County Match: \$ N/A

## ADDITIONAL COSTS


Estimated Ongoing Costs: \$\_\_\_\_\_/yr

For:

(Not included in dollar value above)

(eg. maintenance, utilities, janitorial, salaries, etc.)

## CONTRACT REVIEW

Division Director \_\_\_\_\_ Date In \_\_\_\_\_ Changes Needed Yes ☐ No ☐ Reviewer  Date Out 9/6/11

Risk Management 9-6-05 Yes ☐ No ☒ M. Smith 9-6-05

O.M.B./Purchasing \_\_\_\_\_ Yes ☒ No ☐ *Signature: [Signature] 9/16/08*

County Attorney 9-6-05 Yes ☐ No ☒ Jm Gumsler 9-6-05

Comments: Public entity crime stmt (will be attached in further to execution

ADMINISTRATIVE SERVICES DEPARTMENT

**PURCHASING OFFICE**

**TABULATION SHEET**

OPEN DATE: JUNE 28, 2005 AT 11:00 AM

TITLE: PROFESSIONAL BEACH CLEANING, MAINTENANCE & BEAUTIFICATION, HIGGS BEACH

RESPONDENT	COST PER YEAR
EE & G	\$87,750.00

Bid Committee Present: Lisa Ernst Cherry and Carlos Victores - Purchasing Office, John King and Ann Rigger - Facility Maintenance.  
Members of the Public Present: None

I hereby certify that this is a true and correct copy of said bid opening and that all bidders listed above have been checked against the State of Florida Convicted & Suspended Vendor listings. All bids listed above were received by the date and time specified.

Bid Opened By: Lisa Ernst Cherry, Purchasing Supervisor

## **CONTRACT**

THIS AGREEMENT, made and entered into this 21<sup>st</sup> day of September, 2005, A.D., by and between MONROE COUNTY, FLORIDA , (hereinafter sometimes call the "owner"), and Evans Environmental & Geological Science & Management, LLC (hereinafter called the "Contractor").

That the parties hereto, for the consideration hereinafter set forth, mutually agree as follow:

### **1.01 THE CONTRACT**

The contract between the owner and the contractor, of which this agreement is a part, consists of the contract documents, as specified in paragraph 2.

### **1.02 THE CONTRACT DOCUMENTS**

The contract documents consist of this agreement, the specifications, all permitting, all change orders, and any addenda issued hereafter, any other amendments hereto executed by the parties hereafter, together with the bid proposal and all required insurance documentation.

### **1.03 SCOPE OF THE WORK**

The Contractor shall provide all necessary supplies and equipment required in the performance of same, and perform all of the work described in the specifications, and as entitled:

### **PROFESSIONAL BEACH CLEANING, MAINTENANCE & BEAUTIFICATION HIGGS BEACH MONROE COUNTY, KEY WEST, FLORIDA**

And his bid dated June 28, 2005, incorporated by reference as part of this contract document. The specifications shall serve as minimum contract standards, and shall be the basis of inspection and acceptance of all the work.

### **1.04 THE CONTRACT SUM**

The County shall pay to the Contractor for the faithful performance of said services on a per month in arrears basis on or before the 30<sup>th</sup> day of the following month in each of twelve (12) months. The Contractor shall invoice the County monthly for beach cleaning, maintenance, and beautification performed under the Specifications contained herein. The Contract price (as stated in the Contractor's proposal) must be invoiced s follows:

\$7,312.50 per month regular hours seven –days per week (including equipment costs & dumping)

\$ See bid per hour emergencies (ex. Post-hurricanes, including equipment costs & dumping fees)

#### **1.05 CONTRACTOR'S ACCEPTANCE OF CONDITIONS**

- A. The Contractor hereby agrees that he has carefully examined the site and has made investigations to fully satisfy himself that such site is correct and a suitable one for this work and he assumes full responsibility therefore. The provisions of the Contract shall control any inconsistent provisions contained in the specifications. All specifications have been read and carefully considered by the Contractor, who understands the same and agrees to their sufficiency for the work to be done. Under no circumstances, conditions, or situations shall this Contract be more strongly construed against the Owner than against the Contractor.
- B. Any ambiguity or uncertainty in the specifications shall be interpreted and construed by the Owner, and his decision shall be final and binding upon all parties.
- C. The passing, approval, and/or acceptance by the Owner of any of the services furnished by the Contractor shall not operate as a waiver by the Owner of strict compliance with the terms of this Contract, and specifications covering the services. Failure on the part of the Contractor, immediately after Notice to Correct shall entitle the Owner, if it sees fit, to correct the same and recover the reasonable cost of such replacement and/or repair from the Contractor, who shall in any event be jointly and severally liable to the Owner for all damage, loss, and expense caused to the Owner by reason of the Contractor's breach of this Contract and/or his failure to comply strictly and in all things with this Contract and with the specifications.

#### **1.06 TERM OF CONTRACT/RENEWAL**

- A. This contract shall be for a period of one (1) year, commencing October 1, 2005, and terminating September 30, 2006.
- B. The Owner shall have the option to renew this agreement with 30 days notice to contractor prior to the end of the term. This option may be exercised twice for one year terms. The Contract amount agreed to herein might be adjusted annually in accordance with the percentage change in the Consumer Price Index for all urban consumers (CPI-U) for the most recent twelve (12) months available.

#### **1.07 HOLD HARMLESS**

The Contractor covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned

by Monroe County) and any other losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of services provided by the Contractor or any of its Subcontractor(s) in any tier, occasioned by the negligence, errors, or other wrongful act of omission of the Contractor or its Subcontractors in any tier, their employees, or agents.

In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the Contractor's failure to purchase or maintain the required insurance, the Contractor shall indemnify the County from any and all increased expenses resulting from such delay.

The first ten dollars (\$10.00) of remuneration paid to the Contractor is for the indemnification provided for above. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

The provisions of this section shall survive the expiration or earlier termination of this Agreement.

#### **1.08 INDEPENDENT CONTRACTOR**

At all times and for all purposes under this agreement the Contractor is an independent contractor and not an employee of the Board of County Commissioners for Monroe County. No statement contained in this agreement shall be construed so as to find the contractor or any of his/her employees, contractors, servants, or agents to be employees of the Board of County Commissioners for Monroe County.

#### **1.09 ASSURANCE AGAINST DISCRIMINATION**

The Contractor shall not discriminate against any person on the basis of race, creed, color, national origin, sex, age, or any other characteristic or aspect which is not job related, in its recruiting, hiring, promoting, terminating, or any other area affecting employment under this agreement or with the provision of services or goods under this agreement.

#### **1.10 ASSIGNMENT/SUBCONTRACT**

The Contractor shall not assign or subcontract its obligations under this agreement, except in writing and with the prior written approval of the Board of County Commissioners for Monroe County and Contractor, which approval shall be subject to such conditions and provisions as the Board may deem necessary. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or subcontractor shall comply with all of the provisions of this agreement. Unless expressly provided for therein, such approval shall in no manner or event be deemed to impose any obligation upon the board in addition to the total agreed-upon price of the services/goods of the contractor.

#### **1.11 COMPLIANCE WITH LAW**

In providing all services/goods pursuant to this agreement, the contractor shall abide by all statutes, ordinances, rules and regulation pertaining to, or regulating the provisions of, such services, including those now in effect and hereinafter adopted. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this agreement and shall entitle the Board to terminate this contract immediately upon delivery of written notice of termination to the contractor. The contractor shall possess proper licenses to perform work in accordance with these specifications throughout the term of this contract.

The contractor shall comply with Monroe County Code Sections 13-61 through 13-67 concerning the Protection of Sea Turtles.

## **1.12 INSURANCE**

Prior to execution of this agreement, and maintained throughout the life of the contract, the contractor shall furnish to the Owner Certificates of Insurance indicating the minimum coverage limitation as listed below:

**A. General Liability – include as a minimum:**

- Premises Operations
- Products and Completed Operations
- Blanket Contractual Liability
- Personal Injury Liability
- Expanded Definition of Property Damage

The minimum limits acceptable shall be \$300,000 Combined Single Limit

If split limits are provided, the minimum limits acceptable shall be: \$100,000 per person; \$300,000 per Occurrence; and \$50,000 Property Damage.

An Occurrence Form policy is preferred. If coverage is changed to or provided on a Claims Made Policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of 48 months following termination or expiration of the Contract.

***MONROE COUNTY BOARD OF COUNTY COMMISSIONERS MUST BE NAMED AS ADDITIONAL INSURED.***

**B. Vehicle Liability – include as a minimum:**

- Owned, Non-Owned, and Hired Vehicles

The minimum limits acceptable shall be \$100,000 Combined Single Limit

If split limits are provided, the minimum limits acceptable shall be: \$50,000 per Person; \$100,000 per Occurrence; and \$25,000 Property Damage.

***MONROE COUNTY BOARD OF COUNTY COMMISSIONERS  
MUST BE NAMED AS ADDITIONAL INSURED.***

**C. Workers Compensation – limits sufficient to respond to Florida Statute 440.**

In addition, the Contractor shall obtain Employers' Liability Insurance with limits of not less than:

\$100,000 Bodily Injury by Accident  
\$500,000 Bodily Injury by Disease, policy limits  
\$100,000 Bodily Injury by Disease, each employee

Coverage shall be provided by a company or companies authorized to transact business in the State of Florida and the company or companies must maintain a minimum rating of A-VI, as assigned by the A.M. Best Company.

If the Contractor has been approved by Florida's Department of Labor, as an authorized self-insurer, the County shall recognize and honor the Contractor's status. The Contractor may be required to submit a Letter of Authorization issued by the Department of Labor and Certificate of Insurance, providing details on the Contractor's Excess Insurance Program.

If the Contractor participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the contractor may be required to submit updated financial statements from the fund upon request from the County.

**D. Pollution Liability – The minimum limits of liability shall be:**

\$1,000,000 per Occurrence/\$2,000,000 Aggregate

If coverage is provided on a claims made basis, an extended claims reporting period of four (4) year will be required.

**1.13 FUNDING AVAILABILITY**

In the event that funds from Facilities Maintenance Contractual Services are partially reduced or cannot be obtained or cannot be continued at level sufficient to allow for the purchase of the services/goods specified herein, this agreement may then be terminated immediately at the option of the Board of County Commissioners by written notice of termination delivered in person or by mail to the contractor. The Board shall not be obligated to pay for any services provided by the contractor after the contractor has received written notice of termination.

**1.14 PROFESSIONAL RESPONSIBILITY**



The Contractor warrants that it is authorized by law to engage in the performance of the activities encompassed by the project herein described, subject to the terms and conditions set forth in these contract documents. The provider shall at all times exercise independent, professional judgment and shall assume professional responsibility for the services to be provided. Continued funding by the Owner is contingent upon retention of appropriate local, state, and/or federal certification and/or licensure of contractor.

#### **1.15 NOTICE REQUIREMENT**

Any notice required or permitted under this agreement shall be in writing and hand delivered or mailed, postage prepaid, to the other party by certified mail, returned receipt requested, to the following:

FOR COUNTY  
Monroe County Facilities Maintenance  
3583 S. Roosevelt Blvd.  
Key West, FL 33040

FOR CONTRACTOR  
E.E.&G.  
14505 Commerce Way, Suite 400  
Miami Lakes, FL 33016

#### **1.16 CANCELLATION**

- A) In the event that the contractor shall be found to be negligent in any aspect of operation maintenance, repair, or service, the County shall have the right to terminate this agreement after five days written notification to the Contractor.
- B) Either of the parties hereto may cancel this agreement without cause by giving the other party sixty (60) days written notice of its intention to do so.

#### **1.17 GOVERNING LAWS**

Governing Law, Venue, Interpretation, Costs, and Fees: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of the agreement, the County and contractor agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

The County and Contractor agree that, in the event of conflicting interpretation of the terms or a term of this agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

#### **1.18 RECORDKEEPING**

Contractor shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the County or Clerk determines that monies paid to Contractor pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Contractor shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to Contractor.

#### **1.19 SEVERABILITY**

If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Contractor agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

#### **1.20 ATTORNEY'S FEES AND COSTS**

The County and Contractor agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

#### **1.21 BINDING EFFECT**

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and Contractor and their respective legal representatives, successors, and assigns.

#### **1.22 AUTHORITY**

Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

### **1.23 CLAIMS FOR FEDERAL OR STATE AID**

Contractor and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

### **1.24 ADJUDICATION OF DISPUTES OR DISAGREEMENTS**

County and Contractor agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

### **1.25 COOPERATION**

In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and Contractor agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and Contractor specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

### **1.26 NONDISCRIMINATION**

County and Contractor agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or Contractor agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and

Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patent records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.) as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note0, as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement. Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the basis of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age. 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of , this Agreement.

#### **1.27 COVENANT OF NO INTEREST**

County and Contractor covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

#### **1.28 CODE OF ETHICS**

County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

#### **1.29 NO SOLICITATION/PAYMENT**

The County and Contractor warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the Contractor agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

#### **1.30 PUBLIC ACCESS**

The County and Contractor shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Contractor in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Contractor.

### **1.31 NON-WAIVER OF IMMUNITY**

Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the County and the Contractor in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

### **1.32 PRIVILEGES AND IMMUNITIES**

All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers agents or employees of any of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers agents, volunteers, or employees outside the territorial limits of the County.

### **1.33 LEGAL OBLIGATIONS AND RESPONSIBILITIES**

Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by and participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

### **1.34 NON-RELIANCE BY NON-PARTIES**

No person or entity shall be entitled to rely upon the terms, or any of them, of the Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Contractor agree that neither the County nor the Contractor or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart,

inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

#### **1.35 ATTESTATIONS**

Contractor agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, An Ethics Statement, and a Drug-Free Workplace Statement.

#### **1.36 NO PERSONAL LIABILITY**

No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

#### **1.37 EXECUTION ON COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument any of the parties hereto may execute this Agreement by signing any such counterpart.

#### **1.38 SECTION HEADINGS**

Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

#### **1.39 CONTINGENCY STATEMENT**

Monroe County's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Monroe county Board of County Commissioners.

#### **1.40 SPECIFICATIONS**

The required services to be performed by the Contractor shall be to clean and maintain the entire length and width of the designated public beach areas from the waters edge to the curb line or nearest edge of the pavement of the public road nearest to and paralleling the beach area including the area between the White Street Pier and West Martello Towers, seven days per week, weather and/or environmental conditions permitting. See Exhibit "A" attached for a map detailing the beach cleaning area dimensions. Cleaning and maintaining includes daily seaweed and trash removal by the contractor. Proper disposal of seaweed shall be the contractor's responsibility. Cleaning and maintaining of the beach area is to be completed by 9:30 a.m. Higgs

Beach must be cleaned using the Beach Tech 3000 machine or an equivalent (to be determined by the department head).

The contractor shall maintain all work areas within and outside the project boundaries free from any environmental pollution which would be in violation of any federal, state, or local regulations.

All debris, trash and seagrass removed from the beach shall be properly disposed of at an approved landfill and/or transfer station. The contractor shall provide copies of all dump tickets with the monthly invoice for the County's records.

Work is likely to be influenced by the tides. The tides can have an effect on the timing and work schedule. No extra claims shall be made for the tides or for other natural weather conditions.

The Contractor will coordinate the beach cleaning action with the FDEP, Office of Beaches & Coastal Systems, to ensure that the expertise and overall desires of the Department with respect to beaches and shores are included in the everyday cleaning operation, all in accordance with the requirements of Chapter 161, Florida Statutes.

The Contractor shall obtain and maintain all necessary permits and approvals and shall comply with all federal, state and local laws and regulations concerning the subject matter of the Contract Documents.

**Alert:**

The Monroe County Board of County Commissioners has beach cleaning regulations in the Monroe County Code, Chapter 13, Article IV, regarding protection of sea turtles (attached). The Contractor shall use its best efforts to observe and to immediately notify the Sr. Director of Lower Keys Operations of any sea turtle nesting, attempted nesting or crawl activity in the contracted areas. The Contractor shall also coordinate and cooperate with State Agencies and sea turtle conservation groups during turtle nesting season. No beach cleaning activities shall take place during April 15 through October 31 until Save-a-Turtle representatives and/or the Contractors Certified Turtle Inspector, have walked the beaches.

**Mechanized Equipment:**

Each vehicle utilized on the beaches shall have sufficient lights to illuminate its working area. Each vehicle utilized on the beach shall be identified by a registration number, which has been assigned by the State of Florida. All mechanized equipment that will be transporting debris, trash, litter, seaweed, sand, and refuse to a disposal site, or to and from the beach areas, shall be registered with the Florida Department of Highway Safety and Motor Vehicles, and shall be enclosed or completely covered to prevent discharge. All vehicles transporting debris or equipment shall travel along major arterial roads. Residential roads or streets may not be used, except where no other means of ingress and egress are available.

The Contractor shall submit technical data of all beach cleaning equipment for review and approval by the Sr. Director of Lower Keys Operations. The cleaning process should not remove significant amounts of sand from the beach.

**Debris, Trash and Litter Removal:**

- A. Debris, trash and litter removal, wood, plastic, glass, paper, tar, pine needles, palm fronds, coconuts, tree limbs, metal objects and other forms of debris, trash and litter deposited on the beach by the ocean or by bather usage, shall be raked up and removed to the disposal site on a daily basis.
- B. Trash Removal: Fixed or mobile trash containers of any nature; round, square, wood, or metal, provided by the County that are located anywhere on the sand and seaward of the curb or edge of the pavement of the nearest road paralleling the Beach area, shall be emptied and hauled to disposal site on a daily basis.
- C. Trash floating in the water behind seaweed shall also be removed.

**Seagrass:**

The Contractor shall rake up all seagrass including the tide level strand line whenever located on the beaches and haul it to the disposal site. The Contractor is responsible for disposing of seaweed in such a manner which would not be in violation of any federal, state, or local regulations.

When seaweed rack is greater than 10" in depth, the contractor shall use an initial cleaning method to supplement the final Beach Tech cleaning.

**Emergency Services:**

The County Sr. Director of Lower Keys Operations shall contact the Contractor immediately when an emergency call is needed. The Contractor shall also notify the Sr. Director of Lower Keys Operations at 292-4431 immediately in the event of a facility emergency. The Contractor shall respond to all emergency calls which occur during normal working hours and holidays and weekends within three hours of notification by the County. The Contractor shall invoice the County for after-hour, weekend and holiday emergencies based on the applicable hourly rate indicated in the contract.

**Hazard Management:**

The Contractor agrees to provide such hazard management services as the Owner's representative may request. The Contractor agrees to be available for the performing of such services on an emergency basis and shall respond to the request for the correction of such hazardous conditions, within a 24 hour period, such services shall be at additional hourly costs as established by the Bid Proposal, and include, but are not limited to, the shoring of eroding and deteriorated walkways by moving fill into place around them, grading storm-cut escarpments and removing threatening debris. Foreign material in excess of one ton which must be lifted at once is excluded from the Contractor's responsibility.

**Protection of Air Quality**



The air pollution likely to occur due to construction operations shall be minimized by, requiring the use of properly operating combustion emission control devices on construction vehicles and equipment used by contractors, and by encouraging the shutdown of motorized equipment not actually in use.

Trash burning will not be permitted on the constructions site.

#### **Erosion Control and Beach Repair:**

The Contractor shall possess equipment capable of providing certain beach repairs and erosion control measures. The beach is from time to time in need of certain measures for erosion control and repair and, accordingly, the Contractor agrees to provide the following services to the extent of reasonable capability:

- A. Backfilling of washouts, particularly at the foot of any stairs or entrance ways.
- B. Grading of excess sand deposits.
- C. Grading of deep sand furrows and escarpments to a more easily navigated slope.
- D. Adding sand to and grading around beach structures.
- E. Spreading sand provided by the County to replenish sand loss due to storms and/or erosion.
- F. Periodic placing and spreading sand on the beaches as directed by the Sr. Director of Lower Keys Operations.

#### **Erosion Control:**

The Contractor agrees to maintain the contour of the Beaches against further wave action, and to maximize the usable sandy portion of the beach for recreational enjoyment.

#### **Hurricane Conditions:**

In the event a hurricane, major storm, or act of God deposits unusual and excessive amounts of material on the beach, and the Owner's representative reasonably agrees that such deposits are indeed excessive, the Contractor shall respond to the owners request within twenty-four hours of notification .

#### **Attorney's Fees:**

In the event suit is brought by either party relative to this Agreement, the prevailing party shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to reasonable attorney's fees. The venue for any dispute concerning this agreement shall be in Monroe County, Florida.

#### **Submittals:**

Submittals are required for the following:

- a. Beach Tech 3000 or equivalent (as approved by the Sr. Director)–  
data sheets
- b. Schedule
- c. Florida Department of Environmental Protection, Office of  
Beaches & Coastal Systems Beach Cleaning Permit
- d. Front End Loader with long pronged bucket
- e. Dump Truck
- f. Beach tilling contractor and equipment
- g. Seaweed disposal plan

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first written above in four (4) counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original contract.

(SEAL)

Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLOIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor/Chairman

Date: \_\_\_\_\_

(SEAL)

Attest:

CONTRACTOR  
EE&G

By: \_\_\_\_\_  
WITNESS

By: \_\_\_\_\_

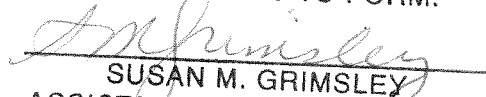
Title: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_  
WITNESS

Title: \_\_\_\_\_

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:

  
SUSAN M. GRIMSLEY  
ASSISTANT COUNTY ATTORNEY